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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

WASHINGTON EDUCATION ASSOCIATION,  
on behalf of itself and its members,

Plaintiff/Petitioner,

v.

WASHINGTON STATE  
PUBLIC DISCLOSURE COMMISSION,  
CHRISTINE YOROZU, Chair,  
GERRY MARSH, LOIS CLEMENT,  
SUSAN BRADY, and RONDA CAHILL,  
Commissioners of the Public Disclosure  
Commission, in their individual capacities,

Defendants/Respondents.

No. 01-2-26074-0KNT

**ORIGINAL**

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

THIS MATTER came on regularly for hearing and trial before the undersigned Judge, the Honorable Richard F. McDermott, on April 29, 2002, on Plaintiffs' Motion for Partial Summary Judgment and for Permanent Injunctive Relief pursuant to 42 U.S.C. § 1983, and on Petition for Judicial Review of an Administrative Agency Action pursuant to RCW 34.05.510 *et seq.*, and the Plaintiffs/Petitioners, Washington Education Association and its members ("WEA" herein), having

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LAW OFFICE OF  
MICHAEL J. GAWLEY  
1001 4TH Ave. Suite 3200  
SEATTLE, WA 98134  
TEL (206) 749-9614  
Fax 1-800-861-9326  
mgawley@gawleylaw.com

1 appeared by and through their attorneys of record MICHAEL J. GAWLEY and HARRIET K.  
2 STRASBERG, and the Defendants/Respondent Public Disclosure Commission ("PDC" herein),  
3 Christine Yorozu, Gerry Marsh, Lois Clement, Susan Brady and Ronda Cahill, appearing by and  
4 through their attorneys of record, CHRISTINE O. GREGOIRE, Attorney General, and NANCY J.  
5 KRIER, Assistant Attorney General, and the Court having considered the above Motion and  
6 Petition; heard the oral argument of counsel; reviewed the files and records contained herein; and,  
7 having specifically considered the following documents and all attachments and exhibits thereto:

- 9 1) Complaint for Violation of Civil Rights, Judicial Review of an Administrative Agency  
10 Action, and for Declaratory Relief of Plaintiffs/Petitioners Washington Education  
11 Association;  
12  
13 2) Defendants'/Respondents' Answer and Affirmative Defenses;  
14 3) Plaintiffs' Motion For Partial Summary Judgment and for Injunctive Relief and the  
15 following declarations and the respective exhibits appended thereto:  
16 a) Declaration of Armand L. Tiberio,  
17 b) Declaration of Mary Lindquist  
18 c) Declaration of Deborah Nissen,  
19 4) Defendants'/Respondents' Memorandum in Response to Motion for Partial Summary  
20 Judgment and for Declaratory Relief, Defendants'/Respondents' Exhibits, and the following  
21 declarations with exhibits appended thereto:  
22 a) Declaration of Vicki Rippie;  
23 b) Declaration of Mary Beth Wright;

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LAW OFFICE OF  
MICHAEL J. GAWLEY  
1001 4<sup>TH</sup> Ave. Suite 3200  
SEATTLE, WA 98154  
TEL (206) 749-9644  
Fax 1-800-861-8926  
mgawley@gawleylaw.com

1 c) Declaration of Lorraine Wilson:

2 d) Declaration of Peter Daniels:

3 e) Declaration of Nancy Krier:

4 5) Petitioner's Trial Brief in Support of Petition for Judicial Review of Agency Action:

6 6) Defendants'/Respondents' Trial Memorandum:

7 7) Plaintiffs'/ Reply In Support of Motion for Summary Judgment and Reply to Trial Brief

8 and the Court having issued an oral decision from the bench on May 23, 2002, and having  
9 determined that there is no genuine issue of material fact, and that Plaintiffs/Petitioners Washington  
10 Education Association and its members are entitled to Judgment for injunctive, declaratory and  
11 other relief as a matter of law, the Court hereby makes that following Findings of Fact and  
12 Conclusions of Law.

### 13 FINDINGS OF FACT

14 1) In 1972, through Initiative 276, the people of the State of Washington enacted RCW  
15 42.17.130.

16 2) RCW 42.17.130 currently provides as follows:

17 No elective official nor any employee of his office nor any person appointed to or  
18 employed by any public office or agency may use or authorize the use of any of the  
19 facilities of a public office or agency, directly or indirectly, for the purpose of  
20 assisting a campaign for election of any person to any office or for the promotion of  
21 or opposition to any ballot proposition. Facilities of public office or agency include,  
22 but are not limited to, use of stationery, postage, machines, and equipment, use of  
23 employees of the office or agency during working hours, vehicles, office space,  
publications of the office or agency, and clientele lists of persons served by the office  
or agency: PROVIDED, That the foregoing provisions of this section shall not apply  
to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative  
body to express a collective decision, or to actually vote upon a motion, proposal,

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LAW OFFICE OF  
MICHAEL J. GAWLEY  
1001 4<sup>TH</sup> Ave. Suite 3200  
SEATTLE, WA 98154  
TEL (206) 749-9644  
Fax 1-800-861-8926  
mgawley@gawleylaw.com

1 resolution, order, or ordinance, or to support or oppose a ballot proposition so long as  
2 (a) any required notice of the meeting includes the title and number of the ballot  
3 proposition, and (b) members of the legislative body or members of the public are  
4 afforded an approximately equal opportunity for the expression of an opposing view;

(2) A statement by an elected official in support of or in opposition to any ballot  
proposition at an open press conference or in response to a specific inquiry;

(3) Activities which are part of the normal and regular conduct of the office or  
agency.

6 3) The Public Disclosure Commission ("PDC") is a state administrative agency established  
7 pursuant to RCW 42.17.350 and authorized to implement many subsections of Chapter  
8 42.17 RCW. The PDC is composed of five citizen members, and in September 2001, was  
9 composed of the named individual defendants herein: Christine Yorozu, Gerry Marsh, Lois  
10 Clement, Susan Brady and Ronda Cahill.

12 4) In 1979, the PDC adopted rules to implement RCW 42.17.130. Those rules currently  
13 provide:

14 WAC 390-05-271

15 (1) RCW 42.17.130 does not restrict the right of any individual to express his or her  
16 own personal views concerning, supporting, or opposing any candidate or ballot  
17 proposition, if such expression does not involve a use of the facilities of a public office  
or agency.

18 (2) RCW 42.17.130 does not prevent a public office or agency from (a) making  
19 facilities available on a nondiscriminatory, equal access basis for political uses or (b)  
20 making an objective and fair presentation of facts relevant to a ballot proposition, if  
such action is part of the normal and regular conduct of the office or agency.

21 5) WAC 390-05-273 thereafter defines "normal and regular conduct," as follows:

22 Normal and regular conduct of a public office or agency, as that term is used in the  
23 proviso to RCW 42.17.130, means conduct which is (1) lawful, i.e., specifically  
authorized, either expressly or by necessary implication, in an appropriate enactment,  
and (2) usual, i.e., not effected or authorized in or by some extraordinary means or  
manner. No local office or agency may authorize a use of public facilities for the

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LAW OFFICE OF  
MICHAEL J. GAWLEY  
1001 4<sup>th</sup> Ave, Suite 5200  
SEATTLE, WA 98134  
TEL (206) 749-9644  
Fax 1-800-861-6926  
mgawley@gawleylaw.com

1 purpose of assisting a candidate's campaign or promoting or opposing a ballot  
2 proposition, in the absence of a constitutional, charter, or statutory provision separately  
3 authorizing such use.

4 6) RCW 42.17.130 has been the subject of numerous interpretations though PDC Declaratory  
5 Orders and formal Attorney General Opinions since 1972, and has been the subject of  
6 numerous other publications available to the public. The PDC representatives have been  
7 educating the public about RCW 42.17.130 for many years, including through speeches and  
8 training sessions, written publications, and other efforts.

9 7) PDC Declaratory Order No. 4 was adopted in 1980 to address RCW 42.17.130's prohibition  
10 on the use of public school resources to assist campaigns, and to specifically address the  
11 statute's prohibition on the use of school's internal mail distribution systems.

12 8) In 1993, the PDC approved guidelines to educate the public concerning RCW 42.17.130's  
13 provisions and their application to public school districts and their employees.

14 9) At a public meeting of the PDC held August 28, 2001, after input from the public, including  
15 WEA's representatives, the PDC unanimously updated the 1993 guidelines. It is those 2001  
16 guidelines, entitled PDC Interpretive Statement No. 01-03: Guidelines for School Districts in

17 Election Campaigns ("the Guidelines" herein) which are the subject of this action.

18 10) *The e-mail and internal mail systems of public schools*  
19 *are public facilities.*  
20 CONCLUSIONS OF LAW

21 1) This Court has jurisdiction over the subject matter and the parties to this action.

22 2) Where First Amendment free speech rights to engage in political speech are at issue, the  
23 Court must construe RCW 42.17.130 narrowly and must apply exacting scrutiny to its  
impact.

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LAW OFFICE OF  
MICHAEL J. GAWLEY  
1001 4<sup>TH</sup> Ave. Suite 3200  
SEATTLE, WA 98154  
TEL (206) 749-9644  
Fax 1-800-861-8926  
mgawley@gawleylaw.com

- 1 3) The PDC has failed to satisfy its burden of proof that the Guidelines in question are narrowly  
2 tailored to achieve a compelling state interest.
- 3 4) The relief granted herein pursuant to 42 U.S.C. § 1983 is not precluded by RCW 34.05.510,  
4 as § 1983 provides an independent means to review the effect of acts taken by individual  
5 state actors that violate the constitutional rights of citizens.
- 6 5) Pursuant to 42 U.S.C. § 1983, a party is not required to demonstrate actual injuries to  
7 prevail- they need only establish a violation of their constitutional rights.
- 8 6) Moreover, a plaintiff need not expose him or herself to actual arrest or prosecution to  
9 challenge a statute that deters the exercise of his or her constitutional rights. Therefore, it is  
10 appropriate for the WEA to bring this action at this time.
- 11 7) The Guidelines violate Plaintiff's Petitioner's United States Constitution First Amendment  
12 free speech and association rights and Fourteenth Amendment due process Rights.
- 13 8) The possibility of irreparable injury clearly exists in this matter as the Guidelines adopted by  
14 the PDC on August 28, 2001, as PDC Interpretive Statement No. 01-03: Guidelines for  
15 School Districts in Election Campaigns ("the Guidelines"), which purport to interpret and  
16 implement RCW 42.17.130 will and have lead to a chilling of Plaintiffs/Petitioner's free  
17 speech rights.
- 18 9) The Guidelines are overbroad. The Guidelines go well beyond what is necessary to avoid  
19 the use of public facilities in an election campaign. Consequently, plaintiffs are precluded  
20 by the Guidelines from engaging in effective communications regarding a wide variety of  
21 issues vital to them even when no use of public resources is implicated.  
22  
23

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LAW OFFICE OF  
MICHAEL J. GAWLEY  
1001 4<sup>th</sup> Ave. Suite 3200  
SEATTLE, WA 98154  
TEL (206) 749-9644  
Fax 1-800-861-8926  
mjgawley@gawleylaw.com

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- 1 10) The Guidelines allow employees and union representatives to "make available campaign  
2 materials to employees in lunchrooms and breakrooms, which are used only by staff or other  
3 authorized individuals." However, many other areas within a school building clearly "are  
4 used only by staff or other authorized individuals," yet remain off limits to private  
5 exchanges. Even though there is no functional distinction between such places and  
6 lunchrooms and breakrooms, the Guidelines nevertheless purport to ordain one locality as  
7 acceptable, to the exclusion of all other such places. *Such a distinction is  
8 arbitrary and capricious.* *RJM*
- 9 11) Private discussions during non-work hours among teachers and other school employees at  
10 work, including the exchange of written materials produced without the use of public  
11 resources, are not prohibited by RCW 42.17.130 because such discussions do not constitute  
12 a "use of public facilities."
- 13 12) The Guidelines are also overbroad to the extent that they purport to regulate "issue  
14 advocacy."
- 15 13) The bulk of Plaintiffs'/Petitioners' communications herein ~~are~~ *appear to be* in the category of "issue  
16 advocacy," not "express advocacy." *RJA*
- 17 14) The extent to which political speech may be regulated turns upon the distinction between  
18 "issue advocacy" and "express advocacy" and the Guidelines make no distinction between  
19 the two.
- 20 21 15) As to "issue advocacy" materials or information, so long as employees are permitted to use  
22 facilities for other private communications, the State cannot constitutionally prohibit  
23 dissemination of political speech by the plaintiffs based upon the content of the

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LAW OFFICE OF  
MICHAEL J. GAWLEY  
1001 4<sup>th</sup> Ave. Suite 3200  
SEATTLE, WA 98154  
TEL (206) 749-9644  
Fax 1-800-861-8926  
mgawley@gawleylaw.com

1 communications, absent a showing of material and substantial disruption to the educational  
2 process.

3 *ruling RSM*  
4 16) This ~~holding~~ applies with equal force to both electronic mail, such as "email," and to other  
5 non-electronic internal mail systems.

6 17) Plaintiffs' summary judgment motion is granted and their motion for injunctive and  
7 declaratory relief pursuant to 42 U.S.C. § 1983 is granted in all respects.

8 18) Plaintiffs are entitled to a declaration pursuant to 42 U.S.C. § 1983, and the Court hereby  
9 declares that the individual commissioner defendants' actions in adopting, promulgating and  
10 disseminating the challenged provisions of the Public Disclosure Commission's Guidelines  
11 for School Districts in Election Campaigns, entitled PDC Interpretation No. 01-03, ("the  
12 Guidelines"), set forth immediately below, violated and continue to violate Plaintiffs' United  
13 States Constitution First Amendment free speech and association rights and Fourteenth  
14 Amendment due process rights:  
15

16 A. [Employees and Union Representatives] may, during non-work  
17 hours, make available campaign materials to employees in  
18 lunchrooms and breakrooms, which are used only by staff or  
other authorized individuals.

19 B. [Union Representatives] shall not distribute promotional  
20 materials in classrooms or other public areas.

21 C. [Union Representatives] shall not use the school's internal mail or  
22 email system to communicate campaign-related information,  
including endorsements.

23 19) Plaintiffs are entitled to a permanent injunction under 42 U.S.C. § 1983 against the  
individual named defendants Christine Yorozu, Gerry Marsh, Lois Clement, Susan Brady,

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LAW OFFICE OF  
MICHAEL J. GAWLEY  
1001 4<sup>TH</sup> Ave, Suite 3200  
SEATTLE, WA 98154  
TEL (206) 749-9644  
Fax 1-800-861-8926  
mgawley@gawleylaw.com



1 and Ronda Cahill, <sup>or Rjm</sup> and any of their successors in office, and all such persons' agents, staff,  
2 attorneys, and those in active concert or participation with them who receive actual notice of  
3 the Permanent Injunction ("Defendants" herein), as follows:

- 4 A) From distributing, publishing, or otherwise disseminating, in any manner, including,  
5 but not limited to, Internet or other electronic publishing methods, any versions or  
6 copies of the Public Disclosure Commission Guidelines for School Districts in  
7 Election Campaigns, entitled PDC Interpretation No. 01-03, ("the Guidelines"),  
8 containing any of the provisions set forth above in paragraph 18, or containing any  
9 reasonably similar substituted versions of the same;
- 10 B) From continuing to publish the above-cited provisions of the Guidelines set forth in  
11 above in paragraph 18 on the Public Disclosure Commission's Web Site. The  
12 <sup>should be Rjm</sup> defendants ~~are~~ ordered to immediately remove these provisions;
- 13 C) From initiating or maintaining any investigation or enforcement action, prosecution  
14 or other similar action or proceeding based upon any alleged or perceived violation of  
15 the provisions of the Guidelines set forth above in paragraph 18, or of any reasonably  
16 similar substituted versions of the same.
- 17 20) The Permanent Injunction issued by the Court herein is attached hereto.
- 18 21) The Court expressly reserves the issue of a judgment against each of the named individuals  
19 for reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988. The parties are  
20 directed to brief those issues and submit such briefs to the Court under separate cover. In  
21  
22  
23

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LAW OFFICE OF  
MICHAEL J. GAWLEY  
1001 4<sup>TH</sup> Ave, Suite 3200  
SEATTLE, WA 98154  
TEL (206) 749-9644  
Fax 1-800-461-4926  
mgawley@gawleylaw.com

*requested Rtn*  
1 addition, counsel for Plaintiffs/Petitioners are ~~ordered~~ to prepare an affidavit of Attorneys'  
2 Fees and Costs.

3 22) Plaintiffs/Petitioner's Petition for Judicial Review of an Administrative Agency Action  
4 pursuant to RCW 34.05.510 is hereby granted in favor of Petitioners.  
5

6 23) Specifically, the Court holds that, pursuant to RCW 34.05.574, Petitioners are entitled to a  
7 declaration, and the Court hereby declares, that the challenged provisions of the Guidelines,  
8 as set forth above:

9 A) violate their First Amendment free speech and association rights and Fourteenth  
10 Amendment due process rights;

11 B) violate their free speech rights pursuant to Article 1, Section 5 of the Washington  
12 State Constitution; and  
13

14 C) are arbitrary and capricious.

15 24) Petitioners are furthermore entitled to injunctive relief against the Washington State Public  
16 Disclosure Commission pursuant to RCW 34.05.574 in the same form as is set forth above  
17 with respect to the relief granted pursuant to 42 U.S.C. § 1983.

18 25) Defendants/Respondent have requested a stay of all orders issued herein by this Court  
19 pending appeal. The Court reserves this issue and directs the parties to brief this issue to the  
20 Court before ruling thereon.  
21

22 26) The Court reserves the issue of an award of reasonable attorneys' fees and costs, and directs  
23 the parties to brief those issues to the Court.

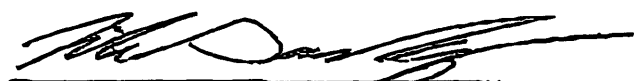
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LAW OFFICE OF  
MICHAEL J. GAWLEY  
1001 4<sup>th</sup> Ave. Suite 3200  
SEATTLE, WA 98154  
TEL (206) 749-9644  
Fax 1-800-861-8926  
mgawley@gawleyllw.com

1 DONE IN OPEN COURT this 29<sup>th</sup> day of July, 2002.

2  
3   
4 THE HONORABLE RICHARD F. MCDERMOTT  
5  
6  
7  
8

9 Presented by:

10   
11 MICHAEL J. GAWLEY, WSBA# 22110  
12 Attorney for Plaintiffs/Petitioners  
13

14   
15 HARRIET K. STRASBERG, WSBA# 15890  
16 Attorney for Plaintiff/Petitioner  
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LAW OFFICE OF  
MICHAEL J. GAWLEY  
1001 4<sup>TH</sup> AVE. Suite 3200  
SEATTLE, WA 98154  
TEL (206) 749-8644  
Fax 1-800-861-8926  
mgawley@gawleylaw.com